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York Mellon f/k/a The Bank of New York, as
Trustee for the holders of the Certificates,
First Horizon Mortgage Pass-Through
Certificates Series FHASI 2005-AR5*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE HOLDERS OF THE CERTIFICATES,
FIRST HORIZON MORTGAGE PASS-
THROUGH CERTIFICATES SERIES FHASI
2005-AR5

Plaintiff,

v.

TRACCIA COMMUNITY ASSOCIATION;
PREMIER ONE HOLDINGS, INC.;
YUANYUAN ZHU; AND NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

Case No.: 2:16-cv-02568-RFB-VCF

**RESPONSE TO COURT'S ORDER DATED
FEBRUARY 28, 2017 [ECF NO. 17] AND
REQUEST FOR EXTENSION OF TIME
FOR ACCOMPLISHED SERVICE**

The Court issued an order on February 28, 2017 regarding its intention to dismiss pursuant to Rule 4(m). As shown in ECF Nos. 18–20, Nationstar has accomplished service on defendants Premier One Holdings, Inc.; Yuanyuan Zhu; and Nevada Association Services, Inc., although not within the 90-day limit of newly amended Rule 4. Therefore, although defendant has now been served, the Bank of New York Mellon requests a retroactive extension of 45 days to accomplish service.

Courts have broad discretion to extend time for service under Rule 4(m). *Efaw v. Williams*, 473 F.3d 1038, 1041(9th Cir. 2003). The U.S. Supreme Court has stated that the time period for

1 service contained in Rule 4(m) "operates not as an outer limit subject to reduction, but as an
2 irreducible allowance." *Henderson v. United States*, 517 U.S. 654, 661 (1996). "On its face, Rule
3 4(m) does not tie the hands of the district court after the 120-day period has expired. Rather, Rule 4(m)
4 explicitly permits a district court to grant an extension of time to serve the complaint after that 120-day
5 period." *Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003). Moreover, the Advisory
6 Committee Notes to Rule 4(m) state that the rule "explicitly provides that the court shall allow
7 additional time if there is good cause for the plaintiff's failure to effect service in the prescribed 120
8 days, and authorizes the court to relieve a plaintiff of the consequences of an application of [Rule
9 4(m)] even if there is no good cause shown." *See* Fed. R. Civ. P. 4(m), Advisory Committee Notes,
10 1993 Amendments.

11 Rule 4 provides for court discretion in its enforcement, providing that a court may "order that
12 service be made within a specified time," even if that time exceeds the recently amended 90-day time
13 frame for service. All Defendants have now been served, and most were served within the 120-day
14 time limit of former Rule 4. Plaintiff believes no prejudice has or will result from the delay in service.

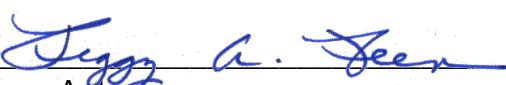
15 For these reasons, Plaintiff respectfully requests the Court exercise its discretion and permit the
16 service now accomplished on defendants Premier One Holdings, Inc.; Yuanyuan Zhu; and Nevada
17 Association Services, Inc.

18 DATED March 29, 2017.

19 **AKERMAN LLP**

20 **IT IS ORDERED** that, as no response
21 has been filed, and the time for filing a
22 response has expired, the motion is
23 **GRANTED**.

24 Dated: April 26, 2017

25
26 
27 Peggy A. Leen
28 United States Magistrate Judge

/s/ *Rex D. Garner*
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the holders of the Certificates, First Horizon
Mortgage Pass-Through Certificates Series
FHASI 2005-AR5*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March, 2017, service of the foregoing
**RESPONSE TO COURT'S ORDER DATED FEBRUARY 28, 2017 [ECF NO. 17] AND
REQUEST FOR EXTENSION OF TIME FOR ACCOMPLISHED SERVICE** was made
pursuant to FRCP 5(b) and electronically transmitted to the Clerk's Office using the CM/ECF system
for filing and transmittal to all interested parties.

/s/ Michael Hannon

An employee of AKERMAN LLP

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